



MINUTES

Elder Abuse Prevention and Intervention Study Committee

November 14, 2013

MEMBERS PRESENT:

Senator Mary Jo Wilhelm, Co-chairperson
Senator Nancy Boettger
Senator Mark Chelgren
Senator Robert Dvorsky
Senator Liz Mathis (by phone)

Representative Julian Garrett, Co-chairperson
Representative Mark Costello
Representative Lisa Heddens
Representative Bruce Hunter
Representative John Landon

MEETING IN BRIEF

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Organizational staffing provided
by: Patty Funaro, Senior Legal
Counsel, (515) 281-3040

Minutes prepared by: Rachele
Hjelmaas, Senior Legal Counsel
(515) 281-8127

- I. Procedural Business
- II. Overview of Elder Abuse Prevention and Intervention in Iowa — Department Perspectives
- III. Task Force Progress Reports
- IV. Committee Recommendations to the Task Force
- V. Materials Filed with the Legislative Services Agency



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I. Procedural Business

Call to Order and Adjournment. The meeting was called to order by temporary Co-chairperson Garrett at 10:05 a.m., Thursday, November 14, 2013, in Room 103 of the State Capitol, Des Moines, Iowa. The meeting was adjourned at 2:53 p.m.

Election of Permanent Co-chairpersons. Members of the committee adopted procedural rules which are available from the Legislative Services Agency (LSA).

Opening Comments. Co-chairperson Garrett reviewed the charge of the committee to receive information from a panel regarding what the current system looks like and where there are gaps in the system.

Co-chairperson Garrett encouraged opening comments from all committee members. Co-chairperson Garrett stated that agreeing on the definition of elder abuse is a difficult issue. He raised questions as to whether there are adequate laws in existence that are just not being enforced and what the age limits are and should be for all victims of dependent abuse. He also wants to know whether persons with mental illness should be considered in the discussion. Co-chairperson Wilhelm stated that a person targeted for any type of abuse should be included in committee discussion. Senator Mathis stated she looks at the issue of elder abuse from a number of different perspectives including as a legislator, a caretaker, and as an employee of a nonprofit family services agency. She noted it was very eye-opening for her to discover there is not a complete set of laws in place in Iowa to protect our elders. Several committee members acknowledged the hard work of the Elder Abuse Task Force and that they are looking forward to receiving and reviewing the 2013 Elder Abuse Task Force Report in mid-December.

II. Overview of Elder Abuse Prevention and Intervention in Iowa — Department Perspectives

Presenters included Ms. Donna Harvey, Director, Iowa Department on Aging (IDA); Ms. Jone Staley, Dependent Adult Abuse Program Manager, DHS; Ms. Wendy Dishman, Investigations Division Administrator, DIA; Ms. Celene Gogerty, Assistant Polk County Attorney; Ms. Chantelle Smith, Assistant Iowa Attorney General; Ms. Linda Hildreth, Elder Abuse Program Director, IDA; and Ms. Deanna Clingan-Fischer, State Long-term Care Ombudsman.

Iowa Department on Aging — Introduction. Ms. Harvey provided an overview of elder abuse law and the role of state agencies, noting that while there is a dependent adult abuse (DAA) law, there currently is no elder abuse law in Iowa; the development of an elder abuse system is at a similar stage in development as the child abuse system was 30 years ago; and since adults have the right to make their own decisions, the child abuse system cannot just be superimposed on an elder abuse system. Under the federal Older Americans Act, the state has an Elder Rights Division in IDA and federal law does define elder abuse. Ms. Harvey noted that prior to convening the 2013 task force, the public entities involved in addressing elder abuse included IDA, the Department of Human Services (DHS), the Department of Inspections and Appeals (DIA), the Office of the Attorney General (AG), the Office of Long-term Care Ombudsman, Area Agencies on Aging, the Polk County Attorney's Office, and consumers. Representatives from these agencies participated in a Lean value stream mapping process to determine where there are areas of duplication, silos,



and collaboration with the goal of identifying opportunities for how the current system can better meet the needs of victims of elder abuse. State department directors agreed that the system should use a single entry point of contact to report elder abuse, and specifically the aging and disability resource centers (ADRCs); supported the continuation of the three-year guardianship and conservatorship project at the University of Iowa; supported funding for the Office of Substitute Decision Maker (OSDM); and supported making mandatory reporter training more consistent across all disciplines.

Department of Human Services. Ms. Staley described the process involved in intake and disposition of reports of DAA through DHS. Inconsistent training affects the disposition of reports. Any DAA report that is rejected is also referred to the respective county attorney or to DIA, as appropriate. If the report is criminal in nature, the report is also referred to law enforcement. The DHS supervisor makes the determination as to whether the report constitutes DAA. While a single point of contact such as the ADRC would be helpful, additional staffing resources would be needed to manage the additional individuals who might be reported under an expansion of the definition of elder abuse. Although reports are forwarded to county attorneys, county attorneys lack adequate resources and appropriate training.

Department of Inspections and Appeals. Ms. Dishman noted that DIA handles DAA reports in health facilities. DIA also addresses financial exploitation and fraud through its Medicaid Fraud and Divestiture units. Ms. Dishman noted certain barriers and gaps in the current enforcement system including delays in the placement of the names of perpetrators of founded abuse on the registry, the inability to share information among agencies, the lack of resources including at the county attorney level, a reluctance to prosecute what is sometimes perceived as a domestic situation, and the limitations of the definition of DAA which requires the alleged perpetrator to be a “caretaker”. She also stated that one of the biggest barriers to prosecution is confusion among county attorneys as to which statute to use when prosecuting elder abuse cases, although she did note that the Medicaid Fraud Control Unit in DIA makes a presentation to the appropriate county attorney with legal counsel recommendations on which Code section to charge for violations and this has helped. Another issue is the lack of oversight under Iowa’s current powers of attorney law (Iowa Code chapter 633B). Without the OSDM, there is no longer a ready option to find an alternative substitute decision maker to replace an attorney-in-fact or other decision maker who is not complying with fiduciary duties.

Polk County Attorney’s Office. Ms. Gogerty noted that many county attorneys are employed part time and do not have the resources or expertise to prosecute DAA cases. Even the Polk County Attorney’s office does not have full-time staff working on elder abuse reports. These deficits also apply to law enforcement agencies that often do not have adequate training to work with elders, especially when dementia is involved.

Ms. Gogerty described the current DAA system under Iowa Code chapter 235B as one which includes three purposes: administrative, which is mainly a process to place perpetrators of founded DAA on the registry for employment purposes; criminal, which provides for the initiation of criminal charges of DAA under Iowa Code section 235B.20; and civil, which allows for the issuance of civil orders to initiate or enjoin certain activities. The use of the same definition of DAA for all three purposes is unusual and causes confusion. Defining DAA to require the alleged perpetrator to be a



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caretaker as a prerequisite to investigating a report results in the report being rejected before services can be provided or orders can be issued to investigate.

Confidentiality requirements are also a barrier especially if the report does not meet the definition of DAA and is rejected outright. Information from a rejected report cannot be shared, thereby prohibiting even a referral for services. Although financial exploitation is much more prevalent than other types of abuse, many times other types of abuse occur along with financial exploitation. The Uniform Power of Attorney Act proposed by the Iowa State Bar Association would help to address financial exploitation. Financial exploitation cases take a lot of time and expertise, and other states are hiring CPAs with the necessary expertise. Ninety percent of perpetrators of abuse are family members or trusted others.

Ms. Gogerty also stated that the 2013 task force discussed the definition of “elder abuse” and reviewed various options. Other states’ definitions were reviewed, but the variations made a determination of the best fit for Iowa’s law difficult.

Office of the Attorney General. Ms. Smith noted that by the time someone contacts the AG to report abuse, it is a last-ditch effort. The AG can contact the appropriate county attorney or law enforcement; however, if a person initially contacts DHS or DIA to report DAA and the case is rejected, the alleged victim is then “trapped” in the system because the information cannot be shared with the AG or IDA. Only the county attorney is specified in the Code for referral of reports. Confidentiality restrictions also prohibit sharing of information for those who need support and services. Information should only be shared on a need-to-know basis within the agencies to ensure respect and dignity. The elimination of funding of the OSDM was a huge loss for people who do not have anyone available to intervene for them. There are crimes that can be charged when a person is assaulted or abused, but these crimes are difficult to prove and many times the victim feels the results are their fault, they are humiliated, or they do not want a family member charged with a crime. Additionally, for a criminal charge of DAA, the alleged perpetrator has to be a caretaker and the alleged victim has to be dependent. It is also difficult to prove the exercise of undue influence. While bankers are not mandatory reporters, they do want to be part of the elder abuse prevention system once a functioning elder abuse system is in place. Banks are able to report suspicious activity and their reports can be used in an investigation through a subpoena. If the definition of DAA is changed to broaden the population of individuals to whom the definition may apply, and the definition of alleged perpetrator is broadened beyond “caretaker,” there will be more cases to address and additional resources will be needed.

Elder Abuse Initiative Demonstration Projects Report. Ms. Hildreth reviewed the history of the Elder Abuse Initiative (EAI) Demonstration Projects, which were implemented in 22 counties from 2001-2011. Funding through the Senior Living Trust Fund for the projects ended June 30, 2011. The EAI established local partnerships to focus on prevention, intervention, detection, and reporting of elder abuse, neglect, and exploitation by presenting elders with options to enhance their lifestyle choices. Elder abuse is defined under the federal Older Americans Act as abuse, neglect, or exploitation of an individual 60 years of age or older. The clients of the projects were individuals age 60 and over, dependent or independent, not living in health care facilities, and at risk of or experiencing abuse, neglect, or exploitation. Project data was collected from 2007-2011 and during that time there were 12,000 referrals, 66 percent of which involved mental health



issues, 44.4 percent of which involved financial exploitation, and only 16 percent of which would have been considered DAA but for lack of involvement of a caretaker or lack of dependency. When abuse existed, it was usually more than one type. If the numbers are extrapolated statewide, there would have been roughly 42,000 referrals. The AG is in the process of reviewing all of the referrals to further explore how to provide assistance.

Office of Substitute Decision Maker. Ms. Clingan-Fischer provided an overview of the historical development of the OSDM, created in Iowa Code chapter 231E, and the data collected during the operation of the OSDM for which funding was eliminated in 2009. The OSDM provided a substitute decision maker as a last resort to individuals with no other option, and the least restrictive form of decision maker was used. The OSDM served as an advocate for individuals when abuse, neglect, and financial exploitation was suspected.

Committee Discussion. The presentations prompted a number of concerns. Senator Chelgren stated his concern about the need for a comprehensive system for the prevention and prosecution of elder abuse instead of just patching together what is not working within the DAA system to protect elders. He also expressed concern about expanding the definition of “caretaker” for DAA beyond persons under the current definition, which is limited to persons that have a defined relationship with a dependent person. Representative Hunter and other committee members questioned the appeals process if a DAA investigation of a caretaker whether in the community or in a facility is determined to be founded. Ms. Dishman responded that there is an appeal process that allows such a caretaker to appeal. When the caretaker’s appeal rights are exhausted, the caretaker’s name is placed on the DAA registry. Representative Landon raised the issue that Iowa’s current power of attorney law (Iowa Code chapter 633B) does not adequately protect older Iowans from financial exploitation by persons in a position of authority over the elderly person. Ms. Smith agreed and noted financial abuse is one of the biggest problems the Attorney General’s Office sees when investigating cases of elder abuse. The power of attorney can be revoked, but the elderly person is then left with no one to protect the person’s interests. The OSDM, if funded and reestablished, could provide this necessary service in this situation.

Representative Garrett expressed an overall concern about the lack of resources, training, and expertise available to human service agencies and law enforcement to investigate and prosecute claims of elder abuse. He also questioned whether the problem is that an elder abuse law does not exist or that existing laws are not being applied to the fullest extent possible. Senator Boettger asked if bankers are mandatory DAA reporters. Ms. Harvey responded that although many banks have training and want to be a part of the solution relating to financial exploitation, reporting is not mandatory as there is a concern about confidentiality laws. Committee members raised several additional questions about confidentiality laws relating to DAA information and information sharing between agencies. Committee members also raised the concern about the need to establish a single entry point of contact for consumers, whether DHS should be the first point of contact for services, and how to ensure the system works collaboratively.

III. Task Force Progress Reports

The 2013 task force formed three workgroups and each workgroup chairperson presented a progress report on their respective workgroups:



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A. Centralization Workgroup Report:

Specialized Education and Training. This workgroup recommended development of a single training module to increase knowledge and distinguish between elder abuse and dependent adult abuse. The module can be developed without a change in the law, but the law will need to be changed to require standardized usage of the module, to develop discipline-specific tracks, determine oversight for the curriculum, and require all trainers to be certified and establish core staffing requirements to ensure consistency and establish educational standards.

Single Entry Point of Contact. The ADRC could be the single point of contact, but DHS would continue to receive and investigate reports of abuse. A mandatory reporter could also contact DHS, but this would be a single point of contact. A single point of contact statewide telephone number could be added to the DHS notice that is sent out indicating if the report is accepted or rejected so that a person could at least get services. The statewide phone number would be a resource for reporting suspected cases of elder abuse and would provide assistance to victims of elder abuse. Legislative changes would be required to address confidentiality provisions that limit the sharing of information essential to providing intervention and protection.

B. Elder Abuse Law and Definition Workgroup Recommendations:

Defining Elder Abuse. This workgroup recommended various options, and the majority of workgroup members when surveyed, supported an expansion of the definition of DAA to include other situations that define abuse.

The workgroup also recommended eliminating a caretaker role as a prerequisite for an accepted report of abuse; moving the criminal provisions in Iowa Code chapter 235B to the criminal statutes portion of the Code; amending Iowa Code chapter 235E to require DIA to inform both the county attorney and the AG of any reports of DAA; expanding the definition of abuse to include emotional and psychological abuse; and providing for the authorization of the use of protective orders similar to domestic abuse protective orders in Code chapter 236.

Safeguards for Financial Exploitation. This workgroup recommended expanding the definition of financial exploitation for the purposes of reporting abuse by mandatory and permissive reporters in long-term care facilities and assisted living programs; creating an elder abuse petition for relief to obtain a protective order/restraining order to freeze assets in cases of financial exploitation; authorizing recovery of actual damages, punitive damages, attorney fees, and court costs in civil actions for financial exploitation; amending criminal provisions relating to theft and degree of theft to include new offenses or to enhance penalties when financial exploitation of an elder is involved; removing any requirement that the perpetrator act for their own profit when defining financial exploitation; addressing other definitions, statute of limitations provisions, and reports to law enforcement; and requiring financial institutions to act as mandatory reporters once an elder abuse system is in place.

Laws Relating to Powers of Attorney, Conservatorship Abuse, and OSDM. This workgroup recommended the adoption of the Uniform Power of Attorney Act as modified by the Iowa State Bar Association; the creation of a registry for powers of attorney; implementation of background checks for prospective conservators; allowing a guardian ad litem to be appointed when an elder is



the victim or witness in a criminal case; and continuation of funding of the guardianship/conservatorship monitoring and assistance pilot project at the University of Iowa.

Multidisciplinary Teams (MDTs). This workgroup recommended reviewing MDTs to determine how prevalent they should be throughout the state to serve older Iowans better; researching the establishment of a state MDT to act in a consultative capacity to local MDTs; expanding MDT powers and functions to address abuse issues; and addressing confidentiality statutes to allow state and local governmental entities to collaborate and share essential confidential information as necessary to provide protection and intervention.

Single Point of Contact. This workgroup also recommended the establishment of a single point of contact for reporting of elder abuse.

C. OSDM/Referrals/Services Workgroup Recommendations:

OSDM. This workgroup recommended various alternatives for operationalizing the OSDM. The workgroup prioritized fully funding the OSDM and expressed concern that the option of eliminating the OSDM is not a viable option. Other options included a phase-in of the OSDM.

Elder Abuse Initiative System. The Elder Abuse Initiative Demonstration Projects previously implemented in 22 counties is the recommended system to implement statewide to focus on prevention, intervention, detection, and provision of services to maintain the health, welfare, safety, and resources of older Iowans. This initiative focused on support and services for older Iowans and was previously funded through the Senior Living Trust Fund.

Allocation of Service Dollars. Funding for services is needed to ensure protection and safety. A fund should be established for emergency services.

Safe Havens. Safe havens should be created in specific locations to house older Iowans who need a safe place to stay.

IV. Committee Priorities

Overview. Each of the members discussed their priorities. The committee did not vote on recommendations.

Senator Chelgren expressed the need to ensure there is ongoing funding rather than a separate fund like the Senior Living Trust Fund; expressed concern that DHS not be the initial contact point for the elder abuse system but that all involved work in tandem; and noted that the definition of elder abuse should include an age specification such as that for social security benefits, but may require a separate definition to address more vulnerable elders.

Senator Boettger stated that whatever process or system is implemented, it must be user friendly and easy to access. She expressed concern with the public perception of DHS as the big brother in this process and noted that IDA does not have this reputation.

Representative Costello expressed concern about limiting the role of the OSDM to cases of last resort to make sure that it does not intrude on the ability of family to care for their own elder family members.



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Representative Landon expressed his gratitude for all of the work of the task force. He does not support the idea that all permissive reporters such as banks should become mandatory reporters. There is a price to pay both personally and professionally for reporting suspected abuse. When people report abuse, they assume it will result in a response. But, the system seems to have gaps that result in reporters and victims being disappointed.

Representative Heddens noted the importance of providing a definition of elder abuse. The OSDM should be funded at a level to allow for a more comprehensive program than before. Guardians ad litem should be provided and provision of safe havens for older Iowans should be looked at. She supports the expansion of the definition of a caretaker beyond a direct caretaker.

Representative Hunter stated supporting fully funding the OSDM as this is a reflection of legislative priorities. He also supports the idea of implementing a single entry point of contact to discuss concerns of or report elder abuse, neglect, and financial exploitation.

Senator Dvorsky supported the idea of placing the criminal provisions relating to elder abuse in the same part of the Code as other criminal provisions; thinks a single point of entry should be a collaborative effort between many state agencies; requested additional information about the role of the OSDM and how it functions; suggested decision makers look into the work that Professor Gittler is doing at the University of Iowa Law School; and supports the Uniform Power of Attorney proposal by the Iowa State Bar Association.

Senator Mathis stated her concern that the Judicial Branch have some ownership in the discussion; removing the limitation of the definition of abuse under Code chapter 235B to the acts or omissions of a caretaker; that the single point of entry be modeled after the 24/7 DHS model and questioned whether it is possible to work within that current system; and stated the need to make sure the Elder Abuse Initiative and the area agencies on aging are fully staffed and fully funded.

Co-chairperson Garrett agreed with much of what was recommended by other committee members and emphasized the need to identify a good definition of elder abuse. He cautioned that if guardianships and conservatorships are effective, changes should not conflict with the existing system. He noted the need to strike a balance between individual rights and the desire to protect others from their own bad decisions. Many of the problems in this area come down to the adequacy of resources necessary to implement and enforce the law.

Co-chairperson Wilhelm reiterated the need to ensure that a single point of contact streamlines access, but that there is still a need for collaboration among the various state and local service agencies; that there is a need to take a hard look into costs involved in any system reform; and there is a need to come up with a workable definition of elder abuse.

V. Materials Filed With the Legislative Services Agency

The materials listed were distributed at or in connection with the meeting and are filed with the Legislative Services Agency. The materials may be accessed from the "Committee Documents" link on the committee's Internet site:

<https://www.legis.iowa.gov/committees/committee?ga=85&session=2&groupID=19052>.



1. Briefings on Meetings Elder Abuse Prevention and Intervention Study Committee 12/04/2013
2. Interim Committee Documents Charge of the Committee 11/14/2013
3. Agendas Tentative Agenda 11/14/2013
4. Materials Distributed Document A: 2013 Elder Abuse Task Force Progress Report 11/08/2013
5. Materials Distributed Document B: 2012 Elder Abuse Task Force Report 11/08/2013
6. Materials Distributed Document C: Office of Substitute Decision Maker (OSDM) History 11/08/2013
7. Materials Distributed Document D: OSDM FAQs 11/08/2013
8. Materials Distributed Document E: 2012 OSDM Report 11/08/2013
9. Materials Distributed Document F: 2012 Elder Abuse Initiative Report Executive Summary 11/08/2013
10. Materials Distributed Document G: 2012 Elder Abuse Initiative Results Report 11/08/2013
11. Materials Distributed Document H: Older Iowans: 2013 11/08/2013
12. Materials Distributed Document I: Code Chapter 231-Department on Aging-Older Iowans 11/08/2013
13. Materials Distributed Document J: Code Chapter 231E-Substitute Decision Maker Act 11/08/2013
14. Materials Distributed Document K: Code Chapter 235B-Dependent Adult Abuse Services-Information Registry 11/08/2013
15. Materials Distributed Document L: Code Chapter 235E-Dependent Adult Abuse in Facilities and Programs 11/08/2013
16. Materials Distributed Document M: Code Chapter 236-Domestic Abuse 11/08/2013
17. Materials Distributed Document N: Code Section 714.16A-Additional Civil Penalty for Consumer Frauds Committed Against Elderly 11/08/2013
18. Materials Distributed Document O: Code Chapter 729-Infringement of Individual Rights 11/08/2013
19. Materials Distributed Document P: Code Chapter 729A-Violation of Individual Rights-Hate Crimes 11/08/2013
20. Materials Distributed Document Q: Code Section 726.7-Wanton Neglect of a Resident of a Health Facility and 726.8-Wanton Neglect or Nonsupport of a Dependent Adult 11/08/2013



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- 21.** Materials Distributed Document R: Sections 633.535, 633.536 and 633.537-Felonious Death 11/08/2013
- 22.** Materials Distributed Document S: Code Chapter 633B-Powers of Attorney 11/08/2013
- 23.** Materials Distributed Document T: The Uniform Power of Attorney Act, Executive Summary 11/08/2013
- 24.** Materials Distributed Document U: The Uniform Power of Attorney Act, Draft Proposal

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